COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

Criminal Appeal No. 319 of 2001
(Old No. 2215 of 1985)

Khushal Singh and another

.....Appellants

Vs.

The State

..... Respondent

Counsel for appellants:- Sri R.S. Sammal & Sri Rajendra Kotiyal
Counsel for respondent: - Sri Amit Bhatt, Addl. G.A. for the State

Approved for reporting.
~~Not approved for reporting.~~

Date: May 01, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 319 of 2001
(Old No. 2215 of 1985)

1. Khushal Singh son of Harak Singh.
2. Jagat Singh son of Sarup Singh.
   Both R/o Village Ghuguti Patti Malla Chaukat, District Almora

.....Appellants

Versus

State ..... Respondent

Dated: May 01, 2007

Sri R.S. Sammal and Sri Rajendra Kotiyal, learned counsel for the appellants
Sri Amit Bhatt, learned Addl. G.A. for the State.

HON. DHARAM VEER, J.

This appeal has been preferred under Section 374(2) of Code of Criminal Procedure 1973 (*hereinafter to be referred as Cr.P.C.*) against the judgment and order dated 7.8.1985 passed by Sessions Judge Almora, in Sessions trial No. 19 of 1983, State Versus Khushal Singh and Jagat Singh, whereby the learned Sessions Judge has convicted the appellants Khushal Singh and Jagat Singh both under section 307 read with Section 34 I.P.C. and has awarded a sentence to undergo rigorous imprisonment for a period of three years to each of them.

2. In brief the prosecution story is that Sarup Singh PW-4 is a resident of a village Ghuguti. Smt. Jhapuli Devi PW –5 is his wife and Sudan Singh P.W.2 is his brother. The accused persons are also residents of village Ghughuti and they are related to each other. It is alleged that Smt. Lali Devi, who was resident of village Ghughuti, was wife of Kam Singh. On the death of Kam Singh, Smt. Lali Devi came into possession over the land and other property belonging to Kam Singh. Kam Singh had a son and a daughter. His son however untraceable since a long time and his daughter was married after the

death of Kam singh. Padam Singh who was the father of Sarup Singh and Sudan Singh started living with Smt. Lali Devi as her husband. Lali Devi died in 1979 and after that Sudan Singh and Sarup Singh continued to be in possession of the land and other property belonging to Kam Singh. These persons had also constructed three houses on the land belonging to Kam Singh. It is stated that after Smt. Lali Devi died, the accused persons and their relative Govind Singh started asking Sarup Singh and Sudan Singh to vacate the houses and land and threatened to beat them in case they failed to do so. It is also stated that ultimately, these accused persons dispossessed Sarup Singh and Sudan Singh and for this reason there was enmity between the two sides.

3. It was stated that early in the morning at 24.04.1982 at 5:30 A.M., Sarup Singh was proceeding for Bohragaon to work at the fields of Gusain Datt and Smt. Jhapuli Devi was proceeding for cutting her wheat crop. Both these persons went together for some distance, after which Sarup Singh started proceeding for Bohargaon. When he reached Monidhaya Tok, both the accused persons Kushal Singh and Jagat Singh along with the absconding accused Govind Singh reached there armed with Lathis and started beating with their weapons. The shouts of Sarup Singh attracted Smt. Jhapuli Devi P.W.5 who also saw the assailants beating her husband. The accused persons and Govind Singh then went away from the scene of occurrence leaving Sarup Singh injured badly. Smt. Japuli Devi reached near Sarup Singh and sat near him. A little later Man Singh P.W. 1 accompanied by his son reached the place of the occurrence and found Sarup Singh lying injured there. On enquiry from Sarup Singh, Sarup Singh told him that he had been injured by Khushal Singh, Jagat Singh and

Govind Singh. Man Singh P.W.1 then called Sudan Singh P.W.2 and informed him that Sarup Singh was lying injured in Monidhaya Tok. Sudan Singh P.W. 2 and a number of residents of the village reached at the scene of occurrence. They were also told about the name of the assailants by Sarup Singh P.W.4, Sudan Singh P.W. 2 then got F.I.R. Ex.Ka-1 written on the spot and lodged the same with the Patwari Daulat Ram, P.W.6 who was in-charge of the area in the absence of Bahadur Ram Patwari, registered the case on the basis of the written report. He prepared the chick report Ex.Ka-3 and recorded the statement of Sudan Singh. He reached the scene of occurrence and found the villagers and Smt. Jhapuli Devi present near the injured. Injured Sarup Singh was then sent to Deghat Hospital. The statement of Smt. Jhapuli Devi was recorded by the Investigation Officer. The Investigation Officer took in his possession blood stained and plain clay from the scene of occurrence and prepared the Fards Ex.Ka-4 and Ex.Ka-5. He also prepared the site plan Ex.Ka-6 after local inspection. The Patwari then reached Deghat Hospital and recorded the statement of Sarup Singh injured. He also took in his possession the blood stained clothes of Sarup Singh and prepared the Fard-Ex.Ka-7. He recorded the statement of some other witnesses. Further investigation in the case was conducted by Bahadur Ram, Patwari P.W.7. On the transfer of Bahadur Ram Patwari, further investigation was conducted by Devi Datt Sati, Patwari. Devi Datt Sati, Patwari, proceeded on leave and Bhupal Singh Bora, Patwari conducted further investigation in the case. He submitted the charge sheet Ex.Ka-8 against the accused persons and the absconding accused Govind Singh on 28.10.1982 in the court of Munsif Magistrate, Ranikhet.

4. After complying with the provisions of Section 207 of the Code of Criminal Procedure. the learned Munsif Magistrate, Ranikhet has committed the case to the court of Sessions on 14.4.1983.

5. The learned Sessions Judge on 15.06.1983 has framed charge under Section 307 read with Section 34 I.P.C. against the present appellants. The charge against the appellant was explained to them who pleaded not guilty and claimed to be tried. The prosecution in support of his case has examined the evidence of P.W. 1 Man Singh, P.W. 2 Sudan Singh, P.W. 3 Dr. O.P.L. Srivastava, P.W.4 Sarup Singh (injured witness) P.W.5 Smt. Japuli Devi (eye witness) and P.W. 6 Daulat Ram Patwari, P.W.7 Bahadur Ram Patwari, and P.W.8 Dr. V.S. Srivastava. After that the statement of the accused persons were recorded under Section 313 Cr.P.C. The accused denied the allegations made against them by the prosecution. After appreciating the entire evidence on record, the learned Sessions Judge has convicted the present appellant Section 307 read that Section 34 I.P.C. and awarded a sentence for three years to each of them. Against the said order the appellants have filed the present appeal.

6. I have heard Mr. R.S. Sammal, learned counsel for the appellant and Sri Amit Bhatt, Additional Government Advocate on behalf of the State.

7. The prosecution has examined eight witnesses in support of its case. Man Singh P.W.1 and Sudan Singh P.W.2 had allegedly reached the place of occurrence after the assailants had gone away from that place. It is alleged that P.W.4 Sarup Singh had disclosed the names of the assailants to them. Sudan Singh P.W.2 has also

lodged the F.I.R. in this case. Sarup Singh P.W. 4 is the injured and has stated about the facts of the case. Smt. Jhapuli Devi P.W.5 has also been examined as an eyewitness of the occurrence. Daulat Ram Patwari P.W.6 and Bahadur Ram. P.W.7 had conducted the investigation of the case as mentioned above.

8. Dr. O.P.L. Srivastava P.W.3 was posted at the Civil Hospital Ranikhet. He had taken the X-ray of Sarup Singh on 30.4.1982 Exs.4 to 10 are the X-ray plates. Dr. O.P.L. Srivastava after the x-ray had prepared the X-ray report i.e. Ex.Ka-2. On the basis of the said report, he stated that he found fracture of lower end of ulna of left forearm and also of lower end of ulna of right forearm. He also found comminuted fracture of lower end of tibia of left leg. He also found a fracture of the 7th rib on the right side of the chest and he had also found a fracture of the 5th metacarpal and middle phalenge of small finger of left hand. He has also stated that these bones may be fractured due to injuries caused by Lathis.

9. Dr. V.S. Srivastava, P.W.8 was posted as Medical Officer, P.H.C. Deghat. He medically examined Sarup Singh P.W.4 at 4.15 P.M. on 24.4.1982. He found the following injuries on his body:-

Head Region:

1. *Scalp deep lacerated wound 4 c.m. x1 c.m. size at the vertax extending from the mid line right side.*
2. *Scalp deep lacerated wound about 3 c.m. from the sagital sulture on the left side size 4 c.m. x1 c.m.*
3. *Lacerated wound scalp deep 7 c.m. from the parietal eminence in the post auricular region right side.*
   None of the above wounds bleeding profusely but ooze is there. All are filled with mud.
4. *Ill defined bruise on the anterior aspect of the right axilla size about 11 c.m. x 4 c.m.*

Right upper limb:-

5. *Abrasion of 2 c.m. x1 c.m. about 7 c.m. above the elbow joint on the extensor aspect.*

6. *Abrasion of 2 c.m. x1 c.m. size about 5 c.m. below the elbow joint on the extensor aspect.*
7. *Lacerated wound muscle deep 7.5 c.m. below the elbow joint obliquely placed on the extensor side of forearm, 8 c.m. long x 2 c.m. bredth; oozing.*
8. *Lacerated wound skin deep on the ulna side 7th c.m. above the unla epecondyle of 2x1 c.m. another 7 ½ cm. aboe 1.1 cm. size, ozzing.*
9. *Swelling of the forearm at middle. Painful to touch. Movement restricted and follow whole of the limb below is swollen. Pulse of the limb feebly palpable.*
10. *On the palmer aspect 1c.m. above the M.P. (metacarpo Phalengeal) joint (middle finger) skin deep 1 cm. x 1cm. size lacerated wound, oozing.*
11. *Complains of pain in chest in the left lower zone. On auscultation creptation are heard.*

Left upper limb:

12. *On the extentionsor aspect abrasion of 1c.m. x 1 c.m. size about 14 c.m. above the left elbow joint.*
13. *At 13 c.m. from elbow joint abrasion of 3 c.m. x 1 c.m. size, on the extensor aspect.*
14. *Abrasion of 2c.m. x 2c.m. in size at the extensor aspect at the ulna side at 9 and 19 c.m. from the elblow (below).*
15. *Swelling of the whole of the dorsum of hand with complain of plain and restriction of movement of fingers.*
16. *Gross swelling of the lower 1/3rd of the upper arm with complain of pain and restriction of movement at the left elbow joint.*

Right lower limb:

17. *Bruise on the antero lateral aspect of thigh at the knee joint (1) size 2 x 1 c.m (2) 4.5 c.m. x 2 c.m., 8 c.m. above the knee joint 2 x 1 c.m. size 12 c.m. above the knee joint 4 x 2.m. size.*
18. *Lacerated wound over the skin 20 c.m. below the tibial tuberosity size 1x1 c.m. along with swelling around the leg with tenderness and restriction of movement at the knee joint.*
19. *Abrasion of 3 x 1 c.m. single ½ c.m. above the malleolous along with deffuse swelling around the medial malleolous.*
20. *Pain and swelling of the foot (whole) with tenderness and restriction of finger movement.*

Left lower limb:

21. *Abrasion with bruises on the antero lateral aspect of the thigh at – from greater trochanter.*
    16 c.m. – 8x3 c.m. size.
    31 c.m. – 4x3 c.m. size.

22. *Bruises from lateral malleolous-*
    at 6 c.m. and 10 c.m. on the atero
    surface of-
    -1x1 c.m. size
    -2x1 c.m. size
23. *Lacerated subungal of the little toe filled with mud not bleeding muscle dep 2 c.m. size.*
24. *Gross swelling around malleoli and dorsum of foot.*

10. In the opinion of the Dr. V.S. Srivastava, injuries Nos.9,11,15,16,18,20 and 24 were grievous and other injuries were simple. X-ray was advised. The injuries were about 8 to 12 hours old and could be caused by some blunt weapon. Dr. Srivastava has proved the injury report Ex.Ka-9. He has stated that injuries could have been caused at about 5 or 6 A.M. on 24.4.1982. The injuries could have been caused by Lathis. The injuries on the head and chest were on vital parts of the body and in case proper and early treatment had not been given to the injured, he might have died.

11. The prosecution has examined P.W. 1 Man Singh who has stated on the date of the incident in the morning his son was going on duty at Patalia. He was going along with his son to drop him on the bus station Deghat which is 3 to 4 kms. from his village. When he reached at Monidhaya Tok in a village along with his son then he saw that Sarup Singh was lying in injured condition. Jhapuli Devi was also there and she was weeping. Sarup Singh was injured and blood was coming from his body. He asked Sarup Singh what happened then Sarup Singh had told him that Kushal Singh, Jagat Singh and Govind Singh had beaten him by Lathis. Sarup Singh has also told him to inform his brother Sudan Singh and then he informed to Sudan Singh and he has gone to Deghat to see of his son at bus station.

12. The prosecution has examined P.W.2 Sudan Singh who has stated that Smt. Lali Devi who was a widow of Kam Singh had married to Padam Singh who is the father of Sudan Singh and Sarup Singh. From the wedlock of Lali Devi and Padam Singh four sons were born and out of four three were alive and the elder bother Jai Singh was died in a war. Lali Devi had died in 1979. Accused person wants to grab the property of Lali Devi for which Sudan Singh and Sarup Singh were entitled being the son of Lali Devi and Padam Singh. At 24.4.1982 in the morning at 5 to 6 when he was in his house then Man Singh informed him that Sarup Singh was lying at Monidhaya Tok in an injured position. Then he reached at Monidhaya Tok then he saw that Sarup Singh was lying there in an injured condition and his wife Jhapuli Devi was sitting there. Then Sarup Singh has told him that he was beaten by Khushal Singh, Jagat Singh and Govind Singh by Lathis. Sarup Singh was injured blood was coming out. Then he lodged the F.I.R. before Patwari, Bharsoli and that report is ex.Ka-1. Then Sarup Singh was taken to the Deghat Hospital. Later on Dr. refer him to the Ranikhet Hospital, where his X-ray was conducted.

13. P.W.3 Dr. O.P.L. Srivastava who has conducted the X-ray. He had taken the X-ray of Sarup Singh on 30.4.1982 Exs. 4 to 10 are the X-ray plates. Dr. O.P.L. Srivastava after the x-ray had prepared the X-ray report i.e. Ex.Ka-2. On the basis of the said report, he stated that he found fracture of lower end of ulna of left forearm and also of lower end of ulna of right forearm. He also found comminuted fracture of lower end of tibia of left leg. He also found a fracture of the 7th rib on the right side of the chest and he had also found a fracture of the 5th metacarpal and middle phalenge of small finger of left

hand. He has also stated that these bones may be fractured due to injuries caused by Lathis.

14. P.W.4 Sarup Sigh is an injured witness he has stated that the accused persons were asking him regularly to vacate the house and land which was inherited by the injured Sarup Singh and Sudan Singh after the death of Smt. Lali Devi. On 24.4.1982 when he was going to Bohragaon in the fields of Gosain Datt to plough the Hal and his wife was going to cut the wheat crop at Lachyali Tok. He and his wife had started from the house altogether at 5:00 A.M. in the morning and before some distance from the place in which they are going, it divided in two ways from where his wife has gone towards Lachyali Tok and he has gone towards Monidhaya Tok. The way towards Govind Datt fields is going through Mondhaya Tok. Monidhaya Tok is in the downwards and Lachiyali Tok is in the upward. When he reached in Monidhaya Tok and he was going towards downwards then appellant Khushal Singh, Jagat Singh and Govind Singh had attacked him by Lathis. He has identified these persons in the Ujala and when he cried, after hearing his cries his wife Jhapuli Devi had also reached the place of occurrence. Jhapuli Devi told to the accused/appellants do not beat to her husband then Jagat Singh had told her do not cry otherwise we will finish you also. Then accused had gone from there and had said now we should move because Sarup Singh had finished. Jhapuli Devi was weeping and crying. After about half an hour Man Singh had reached there then Man Singh had asked him who has beaten you then I have told him Khushal Singh, Jagat Singh and Govind Singh had beaten him by Lathis. He has also asked to Man Singh to inform his brother then Man Singh has informed his brother Sudan Singh and had gone to

Deghat. Then the villagers and Sudan Singh reached there and had told the above incident to his brother and the blood was also coming out from his body. His clothes were stained with blood. He has proved the bloodstained clothes, Shirt Ex.1, Pajama Ex.2 and Under Shirt Ex.3. Then his brother has lodged the F.I.R. before the Patwari Bharsoli and he has been taken to Deghat Hospital. Dr. B.S. Srivastava has examined its injuries. Later on, he was referred to Ranikhet for X-ray. He has also stated that the accused had taken the possession of his house and land. The accused had also threatened him either you leave the house and land and go away otherwise they will finished the all of them.

15. P.W.5 is Jhapuli Devi who is the wife of Sarup Singh and eyewitness. She has also supported the statement given by Sarup Singh. She has stated on the date of the incident at abour 5 'O' Clock in the morning at Monidhaya Tok Khushal Singh, Jagat Singh and Govind Singh has attacked on her husband by Lathis then he asked I will cry then Jagat Singh has told her that if you will cry then we will finish you also. After the injuries Sarup Singh has fallen down and the accused has ran away. Then after sometime Man Singh had reached there along with his son, then Man Singh has inquired about the incident from Sarup Singh and then Sarup Singh has narrated the incident to him and has asked him to call his brother Sudan Singh, then Sudan Singh has reached there alongwith the villagers.

16. P.W.6 is the Daulat Ram Patwari, who has conducted the investigation. He has stated that on 24.4.1982 at about 11:00 A.M., he received the F.I.R. Ex.Ka-1 at headquarter from Sudan Singh. He has prepared the chick report Ex.Ka-3 on the basis of

Ex.Ka-1. He has recorded the statement of some witness and prepared the site plan. He has taken the blood stained and plain clay and prepared the Fard. For Fard Ex.Ka-4 and Ex.Ka-5 he has also proved the Fard. Blood sainted clay is Ex. 11 and plain stained clay Ex. 12 was also proved by him. He has seen that was sealed on the spot. The site plan was also proved by him i.e. Ex.Ka-6. He has also proved the Fard which was prepared on the Deghat Hospital and taking bloody clothes in his possession i.e. Shirt Ex.1, Pajama Ex.2 and Under Shirt Ex.3 was also proved by him these are the blood stained clothes. The investigation was transferred to Bahadur Ram Patwari, on 4.5.1982 when he has come back after leave on duty.

17. P.W.7 is Bahadur Ram, Patwari. He has recorded the statements of some witness then he handed over the charge on 17.6.1982 to Patwari Devi Datt Sati, because he was transferred from that area. After that Devi Datt Sati Patwari, has gone on leave and in his place Bhopal Singh Bhora has taken the charge. On 28.10.1982, Bhopal Singh Bhora has filed a charge sheet against accused Khushal Singh and Jagat Singh and he has also filed charge sheet against Govind Singh as absconder (मफरूरी).

18. P.W.8 is Dr. V.S. Srivastava who has medically examined the injured in the Deghat Hospital. The injuries mentioned in the Injury Report Ex.Ka-9 are mentioned in Para 9 of the judgment.

19. After closing the prosecution evidence, the learned Sessions Judge, recorded the statement of the accused under Section 313 Cr.P.C. who have denied the

allegations made against them by the prosecution, they have not adduced any witness in defence.

20. The learned counsel for the appellants has argued that the place of occurrence is not the same as stated by the prosecution. In this regard it is stated that the incident took place at about 5 A.M. on 24.4.1982. They also alleged that the occurrence took place at Monidhaya Tok when Sarup Singh was proceeding for village Bohragaon. As regards the place of occurrence, the Patwari found Sarup Singh P.W.4 lying injured in Monidhayya Tok. The place of occurrence has been shown by letter 'A' in the site plan Ex.Ka-6 prepared by the Patwari. All the prosecution witnesses of facts have stated that the occurrence took place in Monidhaya Tok. There is no reason to disbelieve this evidence. As regards the time of occurrence, the statement of Sarup Singh P.W. 4 and Smt. Jhapuli Devi, P.W.5, is supported by medical evidence also, which shows that the occurrence could have taken place at about 5 or 6 A.M. on 24.4.1982.

21. The learned counsel for the appellant has further argued that the injuries were not caused by the accused. They have been falsely implicated. Now it is to be seen whether the injuries to Sarup Singh was caused by the accused person. The first witness on whom the prosecution has placed reliance is Sarup Singh P.W.4. This witness has stated that he was proceeding for Boharagaon to plough the fields of Gusain Datt at about 5:00 A.M. on 24.4.1982 and when he reached Monidhaya Tok, accused Khushal Singh and Jagat Singh alongwith Govind Singh came there and started beating him with Lathis. He has also stated that he has identified the assailants in the daylight. He had started shouting and

weeping on which his wife came there and asked the assailants not to beat him. He has further stated that after receiving injuries he fell down and became unconscious and the accused persons went away from the place saying that he had died. He had also stated that Smt. Jhapuli Devi came near him and started weeping. He has further stated that witness Man Singh reached there later and he told Man Singh about the names of assailants. This witness has also stated that he asked Man Singh to call his brother. Man Singh then called his brother Sudan Singh. After some time Sudan Singh and other villagers reached there. He also told these persons about the names of the assailants. It will be clear from the medical evidence referred to above, this witness has received number of injuries and obviously his presence at the scene of the occurrence cannot be doubted. The occurrence had taken place when daylight was available and this witness could have seen the assailants. This witness has been cross-examined at length by the defence counsel but nothing has come out from his statement which could show that he was not speaking the truth. I find that the statement of this witness is reliable, trustworthy and natural.

22. It was argued on behalf of the accused persons that this witness was inimical to the accused because according to him the accused persons had dispossessed him from land and house belonging to Smt. Lali devi and that he was also treated by them with cruelty as is admitted by him. It is true that this witness admitted that he and his brother was dispossessed from the land and the house by the accused and he was also ill-treated by the accused but from this it can also be inferred that the relations between the two sides were very hostile and though the accused person had dispossessed this

witness and his brother from the land and houses, still they were not keeping quiet. This witness has stated that before this occurrence he had put Ghaat to the Devta saying that the accused persons has dispossessed him from the house and land and had threatened him. He has also stated that after that a son in the relation of Khushal Singh have died and for this reason also the accused persons were inimical to him. Considering these facts, it can be accepted that there was enmity between the two sides. This enmity could lead the accused persons to beat Sarup Singh. However, it is difficult to believe that Sarup Singh P.W.4 would not have named the real assailants. Considering the statement of Sarup Singh P.W.4, I am of the view that he is a truthful witness and there was absolutely no reason to disbelieve him. His statement together with the medial evidence in this case is sufficient to establish the guilty of the accused persons appellant Khushal Singh and Jagat Singh.

23. The statement of Sarup Singh P.W.4 is further supported by the statement of Smt. Jhapuli Devi P.W.5. This witness has stated that she was proceeding from her house for cutting wheat crop in Lachyali Tok. She has stated that for some distance she and her husband Sarup Singh moved together and further that Sarup Singh proceeded for Boharagaon towards Monidhaya Tok, while she herself proceeded for Lachyali Tok. She has further stated that later she heard the shout of her husband on which she returned and saw the accused persons Khushal Singh, Jagat Singh and Govind Singh were beating him with Lathis. She has further stated that her husband fell down in the field after which the accused persons went away from that place. This witness has also stated that later witness Man Singh came there

and her husband told him about the names of the assailants. Man Singh called Sudan Singh and after that Sudan Singh and other villagers reached there.

24. Learned counsel for the accused has further argued that in the F.I.R. Ex.Ka-1 Sudan Singh has not disclosed the names of Smt. Jhapuli Devi which will show that she was not an eye witness of the occurrence but was introduced later. It is true that Sudan Singh P.W.2 did not mention the name of Smt. Jhapuli Devi in the F.I.R. but merely because of that it cannot be inferred that Smt. Jhapuli Devi was not an eyewitness of the occurrence and was introduced later. Sudan Singh P.W.2 himself was not an eyewitness of accused but reached the scene of the occurrence much later. In such circumstances, the absence of the name of Smt. Jhapuli Devi in the F.I.R. does not show that Smt. Jhapuli Devi was not present at the place of the occurrence. Man Singh P.W.1 has stated about the presence of Smt. Jhapuli Devi there. The Patwari has also stated that when he reached the scene of the occurrence, he found Smt. Jhapuli Devi there. I believe the assertion of Smt. Jhapuli Devi P.W.5 that she had seen the occurrence.

25. The statement of Sarup Singh P.W.4 is further corroborated by Man Singh P.W.1. This witness has stated that he was proceeding for Deghat with his son, as his son was to go back to the place of his service by bus. He has further stated that when he reached Monidhaya Tok. He found Sarup Singh lying injured and Smt. Jhapuli Devi sitting nearby. He has also stated that when he enquired from Sarup Singh as to what happened, then he stated that Khushal Singh, Jagat Singh, and Govind Singh had beaten him with Lathis. He has also stated that Sarup Singh asked him to call his brother. He then

proceeded for about one furlong and called his brother Sudan Singh and then went away to Deghat with his son.

26. Sudan Singh P.W.2 has also stated that he reached the scene of occurrence after being called by Man Singh P.W.1 On reaching there, he found Sarup Singh lying injured and Smt. Jhapuli Devi sitting nearby. He has further stated that he and the villagers asked Sarup Singh as to what was the matter on which Sarup Sigh told him that he was beaten by Khushal Singh, Jagat Singh, and Govind Singh by Lathis. This witness has further stated that he then got the F.I.R. written on the spot and then lodged the same with the Patwari Bharsoli. The facts about the occurrence have been mentioned in the F.I.R. Ex.Ka-1 which supports the statement of this witness. There was no undue delay in lodging the F.I.R. with the Patwari. This witness was also cross-examined at length but nothing has come out from his statement which will prove his statement doubtful. The statement of this witness is reliable, trustworthy and natural.

27. Considering the entire witness discussed above and the circumstances and facts of the case, I am of the definite view that the evidence produced by the prosecution was convincing and reliable and was sufficient to prove that accused Khushal Singh, and Jagat Singh alongwith one another Govind Singh, caused injuries to Sarup Singh P.W.4 at about 5 A.M. on 24.4.1982 at Monidhaya Tok.

28. Considering the number and nature of the injuries on the parts of the body on the victims on which these injuries were caused, it can be inferred that the assailants had intended to commit the murder of Sarup

Singh. The accused persons are, therefore, liable to be convicted under Section 307, r/w/ Section 34 I.P.C. The learned Sessions Judge has rightly convicted the accused persons under Section 307 read with Section 34 I.P.C. I do not found any illegality or irregularity in the judgment and order passed by the trial Court.

29. Learned counsel for the appellants has submitted that the injured Sarup Singh has died and the accused persons have entered into compromise with the wife injured Sarup Singh P.W.4. As per Section 320 Cr.P.C., offence punishable under Section 307 I.P.C. is not a compoundable offence. So this argument is not tenable and misconceived and is accordingly rejected.

30. In view of the above, the appeal is devoid of merit and is hereby dismissed. The judgment and order dated 07.08.1985 passed by learned Sessions Judge, Almora is hereby confirmed. The sentence passed by the learned Sessions Judge, Almora convicting the accused/ appellants under Section 307 read with Section 34 I.P.C. and sentencing each of them for 3 years R.I. is also hereby confirmed.

31. Let the record of the case be sent to the trial court for compliance of the order.

(Dharam Veer, J.)

Rajeev Dang